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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170413393-8487-02]

RIN 0648-BG83

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Modifications to Individual Fishing Quota Programs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in Amendment 36A to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf) (Amendment 36A), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule requires owners or operators of federally permitted commercial Gulf reef fish vessels landing any commercially harvested, federally managed reef fish from the Gulf to provide notification prior to landing and to land at approved locations; requires shares from the red snapper individual fishing

quota (IFQ) (RS-IFQ) program and the groupers and tilefishes IFQ (GT-IFQ) program that are in non-activated IFQ accounts to be returned to NMFS for redistribution; and allows NMFS to withhold a portion of IFQ allocation at the start of a fishing year equal to an anticipated commercial quota reduction. The purpose of this final rule is to improve compliance and increase management flexibility in the RS-IFQ and GT-IFQ programs, and increase the likelihood of achieving optimum yield (OY) for Gulf reef fish stocks managed under these programs.

DATES: This final rule is effective [*INSERT DATE 30 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*], except for the addition of § 622.26(a)(2), which is effective on January 1, 2019.

ADDRESSES: Electronic copies of Amendment 36A, which includes an environmental assessment, a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2017/A36A_comm_IFQ/am36Aindex.html.

Written comments regarding the burden-hour estimates

or other aspects of the collection-of-information requirement contained in this final rule may be submitted to Adam Bailey, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; or to the Office of Management and Budget (OMB) by email to OIRA_submission@omb.eop.gov, or by fax to 202-395-5806.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: peter.hood@noaa.gov; IFQ Customer Service, telephone: 1-866-425-7627, Monday through Friday from 8 a.m. to 4:30 p.m., eastern time.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On February 21, 2018, NMFS published a notice of availability (NOA) for Amendment 36A and requested public comment (83 FR 7447). On March 21, 2018, NMFS published a proposed rule for Amendment 36A and requested public comment (83 FR 12326). The proposed rule and Amendment 36A

outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 36A and implemented by this final rule is provided below.

Management Measures Contained in this Final Rule

This final rule requires that the owner or operator of a commercial reef fish permitted vessel landing any commercially harvested Gulf reef fish, or Florida Keys/East Florida hogfish harvested in the Gulf, to notify NMFS between 3 and 24 hours in advance of landing and to land at approved locations. In addition, this final rule permanently returns to NMFS any IFQ shares contained in RS-IFQ or GT-IFQ accounts that have not been activated since the current web-based system was put in place on January 1, 2010. Finally, this final rule allows NMFS to withhold distribution of IFQ allocation on January 1, the beginning of the fishing year, if a reduction in the commercial quota for any IFQ species or multi-species group is expected to be implemented in that same fishing year. The amount of IFQ allocation withheld from distribution would equal the amount of the expected commercial quota reduction.

Landing Notification

This final rule expands the requirement for an advance landing notification to all commercial trips that land Gulf reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf even if no IFQ species are on board.

The vessel owner or operator is required to notify NMFS at least 3 hours, but no more than 24 hours, in advance of landing on each trip. The landing notification will report the vessel identification number, the date and time of landing, and the approved landing location. This notification will be submitted via the vessel's existing onboard vessel monitoring system (VMS), but could also be submitted by other NMFS approved methods (e.g., by phone) if they are developed at a later time. NMFS expects that requiring a notification in advance of landing any federally managed reef fish from the Gulf will help deter fishermen from illegally landing IFQ species or reporting IFQ species as another species (e.g., red snapper reported as vermilion snapper), because law enforcement and port agents will be informed in advance of all reef fish trips returning to port and can meet vessels to inspect landings. If any IFQ species are to be landed, all regulations under the applicable IFQ program must be followed, including the

more extensive advance notice of landing report. Only one IFQ advance landing notification covering both IFQ and non-IFQ Gulf reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf is required on such a trip.

Additional information about approved landing locations and submitting additional landing locations to NMFS for approval is described later in this final rule.

Non-activated IFQ Shareholder Accounts

This final rule also addresses RS-IFQ and GT-IFQ shareholder accounts that received shares through the initial apportionment when each IFQ program began, but the accounts have never been accessed by the shareholder since January 1, 2010, the initiation of the current IFQ system. NMFS and the Council have attempted to notify account holders with these non-activated IFQ accounts through phone calls, certified letters, and discussion at public meetings. Although shares in the non-activated accounts represent a small fraction of the total shares, annual allocation assigned to these non-activated IFQ accounts is not landed, and therefore, may prevent achieving OY if not made available for use. This final rule will return the shares from non-activated RS-IFQ and GT-IFQ accounts to

NMFS for redistribution. The Council intends to redistribute these shares to IFQ program participants through a mechanism determined in Amendment 36B to the FMP, which is currently under development.

For more information on how to activate an existing non-activated IFQ account before this final rule is effective, persons may call the IFQ Customer Service line at 1-866-425-7627, and select option 2 during weekday business hours of 8 a.m. to 4:30 p.m., eastern time (see **FOR FURTHER INFORMATION CONTACT** section). In April 2018, NMFS sent additional notification to holders of the non-activated IFQ accounts via certified mail to advise them of this action and to provide an opportunity for those individuals to activate their accounts.

Allocation

Finally, this final rule addresses how to distribute allocation to IFQ shareholders in years in which there is an anticipated reduction of the commercial quota. As a result of the time involved to develop documents, consider alternatives, and solicit public feedback, this situation would generally occur if the Council approved an action to reduce the commercial quota of any IFQ species or multi-

species share category but NMFS could not complete the associated rulemaking before January 1, the start of the fishing year. Under the IFQ programs, annual allocation is distributed to IFQ shareholders on January 1, and most IFQ program participants begin to use or transfer their allocation early in each year. After shareholders begin transferring or landing allocation, NMFS is not able to retroactively withdraw allocation from shareholder accounts if a quota decrease became effective after the beginning of the fishing year. This final rule allows NMFS to anticipate a decrease in the quota of any IFQ species or multi-species share categories after the start of a fishing year and withhold distribution of quota equal to the amount of the expected decrease in commercial quota. NMFS would distribute the remaining portion of the annual allocation to shareholders on January 1. If a final rule to implement the associated commercial quota reduction is not effective by June 1 in the same fishing year, then NMFS would distribute the withheld quota back to the current shareholders, as determined on the date the withheld IFQ allocation is distributed.

Approved Landing Locations

As explained previously, this final rule requires vessel owners or operators on commercial trips who harvest non-IFQ Gulf reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf to land at an approved landing location. To comply with this requirement, current and potential fishery participants may submit additional landing locations to NMFS for approval. Landing locations can be submitted by calling IFQ Customer Service at any time (see contact information above), or by submitting a Landing Location Request Form to NMFS, which is available from

http://sero.nmfs.noaa.gov/sustainable_fisheries/ifq/documents/pdfs/landing_location_request_form.pdf.

A list of currently approved landing locations for the IFQ programs can be found at the IFQ website (*portal.southeast.fisheries.noaa.gov/cs/main.html*), under View Landing Locations. Any landing locations that have been approved for use in the IFQ programs will also be approved to land non-IFQ Gulf reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf. Therefore, NMFS suggests persons check the list to determine if

desired landing locations are currently in use prior to submitting a landing location for approval.

Approved landing locations must be publicly and freely accessible by land and water, and must have a street address or, if a particular landing location has no street address on record, global positioning system (GPS) coordinates for an identifiable geographic location provided in degrees and decimal minutes. Other criteria used by NOAA's Office of Law Enforcement (OLE) when approving locations are listed at 50 CFR 622.21(b) (5) (v) and 622.22(b) (5) (v), and are added by reference to § 622.26(a) (2) (v) through this final rule.

Comments and Responses

A total of 12 comments from 11 individuals were received on the notice of availability and proposed rule for Amendment 36A. Three comments supported the actions in Amendment 36A and the proposed rule and four comments were not relevant to Amendment 36A or the proposed rule. Specific comments related to the actions in Amendment 36A and the proposed rule are grouped as appropriate and summarized below, followed by NMFS' respective responses.

Comment 1: No change should be made to the IFQ program unless all Federal reef fish permit holders can vote on the issue.

Response: NMFS disagrees. The RS-IFQ and GT-IFQ programs were approved through referenda as required by the Magnuson-Stevens Act. However, there is no requirement that NMFS conduct a referendum before the Council revises the IFQ programs as implemented through this final rule. Federal Gulf reef fish permit holders as well as any other interested persons were provided opportunities to submit written comments or provide testimony at Council meetings and public hearings as part of the Council's decision-making process. Further, NMFS provided opportunities for public comment on Amendment 36A and the proposed rule. These opportunities for comment were solicited not only through the **Federal Register**, but also through Council and NMFS outreach materials. All comments received were considered by the Council and NMFS in the development of Amendment 36A and implementation of the associated regulations.

Comment 2: The landing notification requirement for trips with non-IFQ reef fish species is unnecessary,

because VMS already documents vessel position, and there are already reporting requirements in place for fishermen and dealers. The landing notification requirement creates an additional burden for commercial fishermen that make only 1-day trips and will make landings more difficult.

Response: NMFS disagrees that the notification requirement is unnecessary. The 5-year review of the RS-IFQ program identified improving enforcement as a priority, and the landing notification is designed to aid enforcement of both IFQ programs. Requiring additional notification in advance of landing non-IFQ reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf means that law enforcement will be alerted in advance of all reef fish trips returning to port, and therefore can meet vessels to inspect landings. This is expected to help to deter fishermen from illegally landing IFQ species or reporting IFQ species as another species (e.g., red snapper reported as vermilion snapper). NMFS does not expect this requirement to result in a significant burden to fishermen. As described in Amendment 36A, from 2007 to 2015, 80 to 91 percent of trips landing reef fish species also landed IFQ species. Trips with IFQ species on board already have to

provide an advance notice of landing under the regulations for the applicable IFQ program. Thus, this new requirement will apply to a relatively small percentage of additional trips.

NMFS estimates that an advance notice of landing will take approximately 3 minutes to complete for each trip. Therefore, NMFS does not expect the advance landing notification to substantially affect fishing operations for Gulf reef fish. The landing notification may be amended, if necessary, as provided for in the regulatory text of this final rule at 50 CFR 622.26(a)(2)(iv). In addition, because the window for an advance landing notification is from 3 to 24 hours prior to landing, flexibility is provided for fishermen that make only daily trips to complete the advance landing notification when time permits.

Comment 3: Shares from non-activated RS-IFQ and GT-IFQ shareholder accounts returned to NMFS should be redistributed by auction or issued to owners of commercial Gulf reef fish permitted vessels who do not have shares or allocation.

Response: As stated in the NOA and proposed rule for Amendment 36A, the method for redistribution of the shares

returned to NMFS is being considered in Amendment 36B. Amendment 36B is under development by the Council, which is currently considering alternatives for determining how shares should be redistributed and who should receive those shares.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with Amendment 36A, the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being implemented, and the purposes of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this preamble. The objectives of this rule are to prevent overfishing; to achieve, on a continuing basis, the OY from federally managed reef fish stocks; and to rebuild the red snapper stock that has been determined to

be overfished.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments from SBA's Office of Advocacy or the public regarding the economic analysis of Amendment 36A or the certification in the proposed rule. No changes to this final rule were made in response to public comments. The factual basis for the certification was published in the proposed rule and is not repeated here. Because this final rule is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

This final rule contains a collection-of-information requirement that has been approved by OMB under the Paperwork Reduction Act (PRA), temporary control number 0648-0761. NMFS will merge the collection-of-information requirement implemented by this final rule with the existing, approved information collection under OMB Control

Number 0648-0551, Southeast Region IFQ Programs. This final rule requires an owner or operator of a vessel with a commercial Gulf reef fish permit to submit a notification to NMFS on each trip prior to landing exclusively non-IFQ Gulf reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf. Public reporting burden for the requirement is estimated to average 3 minutes per applicable trip, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments on this burden estimate or any other aspects of the collection of information, including suggestions for reducing the burden, to the NMFS Southeast Regional Office at the **ADDRESSES** above; or to OMB by email to *OIRA_submission@omb.eop.gov*, or by fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person will be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved

collections of information may be viewed at
http://www.cio.noaa.gov/services_programs/prasubs.html.

Changes to Codified Text from the Proposed Rule

In this final rule, NMFS modifies the language in §§ 622.21(a)(4) and 622.22(a)(4) to more succinctly explain the amount of IFQ allocation that NMFS may withhold at the beginning of a fishing year if a reduction in the commercial quota of an IFQ species or multi-species share category is expected to be implemented between January 1 and June 1 in the same fishing year. If this situation is expected to occur, then the amount withheld will be equal to the expected reduction of the commercial quota.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Grouper, Gulf of Mexico, Individual fishing quota, Red snapper, Tilefish.

Dated: June 6, 2018.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.21, revise paragraph (a)(4) and add paragraph (a)(6) to read as follows:

§ 622.21 Individual fishing quota (IFQ) program for Gulf

red snapper.

(a) * * *

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper. If the quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota for red snapper is increased. If a reduction in the commercial quota specified in § 622.39(a)(1)(i) is expected to occur after January 1, the beginning of the fishing year, but before June 1 in that same fishing year, NMFS will withhold distribution of IFQ allocation on January 1 in the amount equal to that reduction. If a final rule to implement the commercial quota reduction is not published in the **Federal Register** and effective by June 1, NMFS will distribute withheld IFQ allocation of red snapper commercial quota to current

shareholders based on shareholdings on the date the withheld IFQ allocation is distributed.

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(6) *Returning IFQ shares.* Any shares contained in IFQ accounts that have never been activated since January 1, 2010, in the IFQ program are returned permanently to NMFS on [INSERT DATE 30 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

* * * * *

3. In § 622.22, revise paragraph (a)(4) and add paragraph (a)(9) to read as follows:

§ 622.22 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) * * *

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf groupers and tilefishes, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf groupers and tilefishes. If the quota is increased after the beginning of the fishing year,

then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota for groupers and tilefishes is increased. If a reduction in the applicable commercial quota specified in § 622.39(a)(1) is expected to occur after January 1, the beginning of the fishing year, but before June 1 in that same fishing year, NMFS will withhold distribution of IFQ allocation of the applicable groupers and tilefishes commercial quota on January 1 in the amount equal to that reduction. If a final rule to implement the commercial quota reduction is not published in the **Federal Register** and effective by June 1, NMFS will distribute withheld IFQ allocation of the applicable groupers and tilefishes commercial quota to current shareholders based on the date the withheld IFQ allocation is distributed.

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(9) *Returning IFQ shares.* Any shares contained in IFQ accounts that have never been activated since January 1, 2010, in the IFQ program are returned permanently to NMFS on [INSERT DATE 30 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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4. In § 622.26, revise paragraph (a) to read as follows:

§ 622.26 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators.* (1) The owner or operator of a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.20(a)(1), or whose vessel fishes for or lands reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD. These completed fishing records must be submitted to the SRD postmarked no later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked no later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(2) *Advance notice of landing--(i) General requirement.* For the purpose of this paragraph (a)(2), landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing Gulf

reef fish not managed under an IFQ program or Florida Keys/East Florida hogfish harvested in the Gulf is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 24 hours, in advance of landing to report the time, date, and location of landing, and the vessel identification number (e.g., Coast Guard registration number or state registration number). The vessel must land at an approved landing location and within 1 hour after the time given in the landing notification, except as provided in paragraph (a)(2)(iii) of this section. A vessel landing Gulf reef fish managed under an IFQ program must also comply with the requirements in §§ 622.21 and 622.22, as applicable.

(ii) *Submitting an advance landing notification.*

Authorized methods for contacting NMFS and submitting a completed landing notification include the VMS unit, or another contact method approved by NMFS.

(iii) *Landing prior to the notification time.*

The owner or operator of a vessel that has completed a landing notification and submitted it to NMFS may land prior to the notification time, only if an authorized officer is present at the landing site, is available to meet the vessel, and

has authorized the owner or operator of the vessel to land prior to the notification time.

(iv) *Changes to a landing notification.* The owner or operator of a vessel who has submitted a landing notification to NMFS may make changes to the notification by submitting a superseding notification. If the initial superseding notification makes changes to the time of landing that is later than the original time in the notification, the vessel does not need to wait an additional 3 hours to land. If the initial superseding notification makes changes to the landing location, the time of landing is earlier than previously specified, or more than one superseding notification is submitted on a trip, the vessel must wait an additional 3 hours to land, except as provided in paragraph (a)(2)(iii) of this section.

(v) *Approved landing locations.* Gulf reef fish not managed under an IFQ program, and Florida Keys/East Florida hogfish harvested in the Gulf, must be landed at an approved landing location. Landing locations must be approved by the NOAA Office of Law Enforcement prior to a vessel landing these species at these sites. Proposed

landing locations may be submitted to NMFS; however, new landing locations will be approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the criteria at §§ 622.21(b)(5)(v) and 622.22(b)(5)(v).

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[FR Doc. 2018-12548 Filed: 6/11/2018 8:45 am; Publication Date: 6/12/2018]